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# **DRUG COURT RULES**

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**BY THE JUDICIAL CONFERENCE OF INDIANA**

## JUDICIAL CONFERENCE OF INDIANA

### DRUG COURT RULES

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## **Section 1. Applicability**

(a) These rules apply to any person, firm, corporation, partnership, association, foundation, governmental unit, or agency, whether public or private, that provides or intends to provide IC 12-23-14.5 certified drug court services to persons who participate in the certified drug court.

(b) Any person, firm, corporation, partnership, association, foundation, governmental unit, or agency, whether public or private, that provides or intends to provide any certified drug court service to or for persons ordered by the court to participate in the certified drug court must submit to the requirements for certification.

## **Section 2. Approval Requirements**

A person, firm, corporation, partnership, association, foundation, governmental unit, or agency, whether public or private, that provides or intends to provide services to persons who participate in the certified drug court and whose services are within the scope of IC 12-23-14.5, may not offer, advertise, deliver, or provide services without first obtaining provisional approval or a certificate of approval from the Indiana Judicial Center.

## **Section 3. Definition of Terms**

The following terms, when used in these rules, shall have the meanings below unless the context clearly indicates a different meaning:

**"Addiction treatment services"** means a broad range of planned and continuing care, treatment, and rehabilitation, including, but not limited to, counseling, psychological, medical, and social service care designed to influence the behavior of individual alcohol abusers or drug abusers, based on an individual treatment plan.

**"Alcohol abuse"** means the use of alcohol in a way that harms the individual or society.

**"Alcoholism"** means physical or psychological dependence on the use of alcohol.

**"Case management"** means goal oriented activities that facilitate, coordinate, or monitor the full range of basic human needs, treatment, and service resources and delivery for individual certified drug court participants.

**"Case manager"** means a drug court team member responsible for managing a number of individual drug court participants and the participants' respective case files.

**"Case termination"** means following the procedure for terminating a participant's court imposed obligation to participate in the services of a certified drug court.

**"Certified drug court"** means a drug court that has successfully applied for and has received a certification of approval from the Indiana Judicial Center.

**"Certified services"** include the services a certified drug court may provide under in IC 12-23-14.5-4 but do not include addiction treatment services or chemical testing services.

**"Chemical test"** means an analysis of an individual's blood, breath, hair, sweat, saliva, urine, or other bodily substances to determine the presence of alcohol or a drug.

**"Clinical impression"** means a written summary of the observations and conclusions of a person who has or is working to obtain clinical screening staff status based on a clinical screening the person has conducted and within the scope of the person's training.

**"Clinical screening staff"** means a drug court staff member or team member who refers

the participant to an appropriate treatment provider, evaluates whether the participant meets clinical eligibility requirements for participation in the certified drug court, or both.

**"Documentation"** means a written record acceptable as evidence to demonstrate compliance with these rules.

**"Drug"** includes any controlled substance as defined in IC 35-48-1-9 and any drug as defined in IC 9-13-2-49.1.

**"Drug abuse "** means the use of drugs or harmful substances in a way that harms the individual or society.

**"Drug addiction"** means physical or psychological dependence on the use of drugs.

**"Drug court"** means an immediate and highly structured judicial intervention process for substance abuse treatment of eligible defendants or juveniles that brings together substance abuse professionals, local social programs and intensive judicial monitoring and follows the ten (10) key components.

**"Drug court advisory body"** is a group of people that the supervising judge may appoint to provide advice on drug court matters.

**"Drug court coordinator"** means the administrative head or person responsible for the management and coordination of certified drug court functions and operations. This person is responsible for the certified drug court's compliance with these rules and provides the daily supervision of the drug court's staff and coordination of the drug court team members.

**"Drug court judge"** means the judicial officer who presides over a certified drug court.

**"Drug court services"** means a broad range of planned care, including intervention, clinical screening, referral, case management and monitoring that may be extended to a certified drug court participant and that influence the behavior of the participant toward identified goals and objectives. The services and the manner in which they are provided are guided by the ten (10) key components.

**"Drug court team"** has the meaning set forth in section 15(a).

**"Eligibility screening"** means a procedure for determining a potential participant's legal eligibility for admission to the certified drug court under IC 12-23-14.5-14, IC 12-23-14.5-15 if appropriate, and court guidelines.

**"Evaluation"** means a systematic process used to assess the certified drug court's process or outcomes in light of identified goals and objectives.

**"Harmful substance"** means any substance used by an individual to produce the effect of a controlled substance or drug, although the substance is not classified as a controlled substance under IC 35-48 or as a drug under IC 9-13-2-49.1.

**"Participant"** means any person who has signed a participant agreement or has begun receiving certified services, whichever happens first. However, for the purposes of orientation and confidentiality (sections 19 and 20), "participant" means any person who has applied for services from the certified drug court.

**"Participant orientation"** means the administrative process conducted before or after a participant is admitted to a certified drug court.

**"Policy"** means a statement of the principles that guide and govern the activities, procedures and operations of a certified drug court.

**"Preexisting drug court"** means a drug court that began operation prior to July 1, 2002.

**"Procedure"** means a series of activities designed to implement certified drug court goals or policy.

**"Substance"** means any drug, controlled substance, or alcohol.

**"Substance abuse"** means the use of alcohol or other drugs to an extent that harms the individual or society.

**"Supervising judge"** means the judge who has ultimate responsibility for a certified drug court. This may or may not be the same person as the drug court judge.

**"Ten (10) key components"** means the ten (10) key components of drug courts published by the Drug Court Program Office of the United States Department of Justice.

**"Volunteer"** means a person who, without direct financial remuneration, provides ongoing services to the certified drug court.

#### **Section 4. Compliance**

(a) The Indiana Judicial Center may take the administrative actions necessary to ensure compliance with these rules, including, but not limited to:

- (1) reviews;
- (2) surveys; or
- (3) inspections;

which may be scheduled or unscheduled, announced or unannounced.

(b) In order for a certified drug court to secure and retain a certificate of approval, it must demonstrate compliance with the ten (10) key components and standards imposed by these rules in the following manner:

- (1) The certified drug court must comply with all of the standards for a certified drug court.
- (2) A certified drug court that demonstrates compliance with all the standards for a certified drug court shall be issued a certificate of approval that is valid for three (3) years from the date of issue, unless otherwise revoked.

(c) Any certified drug court which, at the time of revision of these rules is a holder of a current certificate of approval issued under other authority may continue operations with the approval of the Indiana Judicial Center until scheduled certification or re-certification review by the Center is completed. All certified drug courts must comply with these rules as revised and amended.

(d) A certified drug court is in compliance with a standard only when it has met all requirements contained in the standard.

(e) Unless otherwise indicated, these rules and any amendments to these rules take effect thirty (30) days after they are adopted by the Indiana Judicial Conference Board of Directors.

*Commentary on Section 4(b). The ten (10) key components of drug courts published by the Drug Court Program Office of the United States Department of Justice are as follows:*

1. *Drug courts integrate alcohol and other drug treatment services with justice system case processing.*
2. *Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.*
3. *Eligible participants are identified early and placed promptly in the drug court program.*
4. *Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.*
5. *Abstinence is monitored by frequent alcohol and other drug testing.*
6. *A coordinated strategy governs drug court responses to participant compliance.*

7. *Ongoing judicial interaction with each drug court participant is essential.*
8. *Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.*
9. *Continuing interdisciplinary education promotes effective drug court planning, implementation and operations.*
10. *Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court effectiveness.*

## **Section 5. Notification of Intent**

Except as provided in section 7, a court shall notify the Indiana Judicial Center during the planning stages of the court's intention to establish a drug court.

## **Section 6. Initial Certification Procedures**

(a) Except as provided in section 7, a court that proposes to establish a certified drug court under IC 12-23-14.5 must do the following to become certified:

- (1) Submit a standard application form and other materials required under subsection (e), to the Indiana Judicial Center.
- (2) Obtain a written statement from the Indiana Judicial Center under subsection (g) approving drug court's application and its plans for operation.
- (3) Obtain a provisional certificate of approval from the Indiana Judicial Center under subsection (i).
- (4) Obtain a three (3) year certificate from the Indiana Judicial Center under subsection (j).

(b) The prospective drug court must have the written statement from the Indiana Judicial Center described in subsection (g), approving the drug court's application before the court may:

- (1) assess and collect fees under IC 12-23-14.5-12; and
- (2) operate as a certified drug court and receive the benefits of the provisions in IC 12-23-14.5.

(c) A new drug court may not begin the delivery of participant-related services authorized by IC 12-23-14.5 until the prospective drug court has received a provisional certificate of approval under subsection (i) or certificate of approval under subsection (k).

(d) The Indiana Judicial Center will forward to the applicant, upon request, a standard initial application form.

(e) The applicant shall submit the following to the Indiana Judicial Center:

- (1) a letter requesting approval to begin the drug court certification process; and
- (2) the completed application form and any supporting documents.

(f) Upon receipt of all required documents, the Indiana Judicial Center will review the materials submitted. The Indiana Judicial Center may conduct an on-site visit to determine whether all requirements for certification have been met. The Indiana Judicial Center must offer recommendations or suggested corrections as are necessary and appropriate.

(g) The Indiana Judicial Center must determine if a prospective drug court's application should be granted or denied. If the Indiana Judicial Center finds that the applicant is in compliance with all applicable requirements, the Indiana Judicial Center must provide the applicant with a written statement approving the drug court's application and plans for operation. Denial of an application will follow procedures outlined in section 9.

(h) After a prospective drug court has received a written statement from the Indiana Judicial Center approving the drug court's application and plans for operation the certified drug court is established. Upon establishment of a certified drug court, the court:

- (1) must establish procedures required by IC 12-23-14.5, these rules, and guidelines of the state board of accounts concerning the receipt of, accountability for, and disbursement of fees collected and other revenue or monies received pursuant to IC 12-23-14.5-12; and
- (2) may set and require the assessment and collection of fees authorized by IC 12-23-14.5-12.

(i) At least thirty (30) days prior to a scheduled site visit the applicant shall submit a policy and procedures manual developed in accordance with these rules. After a drug court's application and policy and procedures manual has been favorably reviewed and the site visit has been conducted, the Indiana Judicial Center may issue a provisional certificate of approval authorizing the drug court to begin the delivery of services as a certified drug court. Provisional approval is valid for one hundred eighty (180) days of operation during which the Indiana Judicial Center will review the certified drug court's actual delivery of services and record keeping practices. The provisional certificate of approval must be displayed in a prominent place and a copy must be kept on file in the office of the Indiana Judicial Center.

(j) Except as provided for in sections 9 and 10, the Indiana Judicial Center must approve a properly completed and documented application for certification of a drug court with a written statement of its approval if the court has demonstrated the following:

- (1) The certified drug court will provide each of the services and functions it is required to be perform under IC 12-23-14.5 and these rules.
- (2) Based on the certified drug court's policies, procedures, practices, and staff, the certified drug court has the capability to provide the services proposed.
- (3) Adequate revenues and other resources will be provided to support the certified drug court and its services.
- (4) The services of the certified drug court will be delivered through methods likely to assure that participants of the certified drug court will benefit.
- (5) The certified drug court will be operated in compliance with these rules, the requirements of IC 12-23-14.5 and other applicable federal and state laws.

(k) After the applicant has met all of requirements in subsection (j), the Indiana Judicial Center will issue a certificate of approval. The certificate is valid for a period of three (3) years. This document must be displayed in a prominent place and a copy must be kept on file in the office of the Indiana Judicial Center.

## **Section 7. Certification Procedures for Preexisting Drug Courts**

(a) This section applies to a preexisting drug court. A drug court that began operation prior to July 1, 2002, may continue to operate pending certification provided the court follows

the procedures outlined in this section for certification of a preexisting drug court.

(b) Prior to October 2, 2002, the preexisting drug court must:

- (1) notify the Indiana Judicial Center in writing of the date the drug court began operation; and
- (3) request an application for initial certification.

(c) Upon receipt of the letter described in subsection (b), the Indiana Judicial Center will issue a provisional certificate to the preexisting drug court that will be valid for a period of six (6) months. The provisional certificate of approval must be displayed in a prominent place and a copy must be kept on file in the office of the Indiana Judicial Center.

(d) While the provisional certificate is in effect, the court may begin to:

- (1) assess and collect fees under IC 12-23-14.5-12; and
- (2) operate as a certified drug court and receive the benefits of the provisions in IC 12-23-14.5.

(e) The provisionally certified preexisting drug court must complete an application for initial certification and return it to the Indiana Judicial Center with any other materials requested by the Judicial Center, no later than six (6) months after the provisional certificate is issued.

(f) After the Indiana Judicial Center has reviewed the application and accompanying materials the Judicial Center will schedule and conduct a site visit and certification review.

(g) If the Indiana Judicial Center determines that requirements of section 6(j) have been met by the preexisting drug court, the Indiana Judicial Center will issue a certificate of approval that is valid for three (3) years. This document must be displayed in a prominent place and a copy must be kept on file in the office of the Indiana Judicial Center.

(h) A provisionally certified preexisting drug court must comply with these rules and the provisional certificate is subject to revocation for failure to do so.

(i) A preexisting drug court that obtains initial certification under this subsection must follow the procedures for recertification described in section 8.

## **Section 8. Recertification Procedures**

(a) The certified drug court must follow the procedures described in this section to initiate a recertification review and obtain recertification.

(b) Prior to the actual expiration date of the certificate the drug court coordinator must do the following:

- (1) notify the Indiana Judicial Center that the certified drug court intends to apply for recertification and request an application for recertification.
- (2) schedule a review date
- (3) submit the application for recertification and all supporting materials to the Indiana Judicial Center no less than thirty (30) days prior to the review date.

(c) Recertification review may include evaluation of each of the following:

- (1) The certified drug court's compliance with IC 12-23-14.5.
- (2) The certified drug court's compliance with these rules.
- (3) The number, qualifications, and abilities of certified drug court staff.
- (4) The participation by and interaction between the drug court team members.
- (5) The qualifications and abilities of any contractor that provides services to the certified drug court or its participants, and the contractor's compliance with the terms of the contract.
- (6) The qualifications and abilities of any treatment provider that provides treatment services to the certified drug court's participants and the treatment provider's compliance with the terms of the provider referral agreement.
- (7) A review of complaints concerning the certified drug court.
- (8) Any other issues or subjects that the Indiana Judicial Center determines are relevant to the review.

(d) Upon completion of the recertification review, the Indiana Judicial Center may provide an executive summary of the review to the supervising judge and any certified drug court staff the judge wishes to have present. Not later than sixty (60) days after completion of the recertification review the Indiana Judicial Center must send a final report to the supervising judge and certified drug court coordinator.

(e) When the certified drug court has satisfied the requirements of this section and the Indiana Judicial Center determines that all standards required by these rules have been met, the Indiana Judicial Center must issue a new certificate for a period of three (3) years. This document must be displayed in a prominent place and a copy must be kept on file in the office of the Indiana Judicial Center.

## **Section 9. Denial of Application for Certification or Recertification**

(a) The Indiana Judicial Center may deny the request for approval of an application for certification or recertification for any reason enumerated in section 10. If the Indiana Judicial Center determines that a request for certification or recertification of a drug court should be denied, the Indiana Judicial Center must follow the procedures required in this section.

(b) The Indiana Judicial Center must notify the supervising judge, by certified mail, return receipt requested, that the Indiana Judicial Center intends to deny the application. The notice of intention to deny must contain all of the following information:

- (1) A brief statement explaining the reasons for the denial.
- (2) A statement that the decision to deny the application will become final unless the supervising judge submits written objections to the Indiana Judicial Center, within thirty (30) days, stating why the denial should not become final.
- (3) If the supervising judge submits objections to the proposed denial during the thirty (30) days specified in subdivision (2), the drug court's current certificate remains in effect, except in extraordinary circumstances, until the conclusion of negotiations and hearings.
- (4) In extraordinary circumstances, the Indiana Judicial Center may limit or deny this period of extension if it determines that continued certified drug court operations present an imminent danger to the public health or safety.

If the supervising judge submits written objections, the Indiana Judicial Center must provide a full opportunity for adjustment, compromise or settling of all issues.

(c) If objections to an impending denial have been submitted, no settlement of the points of contention can be made, and the Indiana Judicial Center denies the application a second time, the supervising judge may request a hearing within fifteen (15) days of the date the second denial is issued. The Indiana Judicial Center must provide the hearing and the hearing must be conducted as described in section 12.

## **Section 10. Grounds for Denial or Revocation**

The Indiana Judicial Center may revoke any current certificate, or deny an application for certification or recertification for one (1) or more of the following reasons:

- (1) Violation of any rule set forth in these rules by the certified drug court, its coordinator, staff or team.
- (2) Permitting, aiding, or abetting the commission of an unlawful act.
- (3) Conduct or practices found by the Indiana Judicial Center to be harmful to the health or safety of any participant in the certified drug court.
- (4) Deviation by the certified drug court from the plan of operation originally certified which, in the judgment of the Indiana Judicial Center, adversely affects the character, quality, or scope of services being provided to participants.
- (5) Failure of the applicant or holder of a certificate of approval to cooperate with the Indiana Judicial Center in connection with the certification process or an investigation.
- (6) Failure of the applicant or holder of a certificate of approval to provide accurate or reliable information (including the omission of information) on the application or regarding the certified drug court's administration operations or service delivery practices.
- (7) Previous denial or revocation of a certificate of approval.

## **Section 11. Suspension and Revocation Procedures**

(a) Whenever the Indiana Judicial Center determines that any certified drug court may have committed an act, or may have engaged in conduct or practices justifying revocation of its certificate under these rules, the Indiana Judicial Center must, by certified mail, return receipt requested, notify the supervising judge that the Indiana Judicial Center has requested a hearing under section 12(c) to determine the issue of revocation of the drug court's certificate. Notice of the request for hearing must contain a statement of the matters of law and of fact to be determined at the hearing.

(b) The Indiana Judicial Center may, without notice, suspend any certificate simultaneously with the institution of proceedings, under subsection (a), if the Indiana Judicial Center determines that there is an imminent danger to the public health or safety that warrants this action. The suspension continues in effect until the conclusion of all hearings, including any judicial review, unless sooner withdrawn by the Indiana Judicial Center or dissolved by a court of competent jurisdiction.

(c) The Indiana Judicial Center may revoke the certificate of approval of a certified drug court for any of the following reasons:

- (1) Any reason enumerated in section 10(1) through (6) as a reason for revoking or

setting aside a certificate.

(2) Failure of a prospective drug court to receive certification within one (1) year from the date that the drug court initiated its application for certification.

(d) Whenever the Indiana Judicial Center determines that any reason exists justifying the revocation of a drug court's certification, the Indiana Judicial Center must observe the procedures required in section 12. The revocation of a certificate to provide drug court services is also revocation of the approval by the Indiana Judicial Center of the application for certification by the drug court.

## **Section 12. Hearing Procedures**

(a) All hearings held to determine issues relating to the denial of an application for certification or recertification or the revocation of a certificate must follow the procedures described in this section.

(b) A supervising judge who submitted written objections to a denial of an application under section 9(b) may file a request for a hearing.

(1) The request must be in writing and must state the reason for the request.

(2) The request may not include any reasons that were not included in the objections submitted under section 9(b).

(3) The request must be filed with the Indiana Judicial Center within fifteen (15) days after the second denial of the application under section 9(c).

(c) Within thirty (30) days after a request for a hearing has been filed with the Indiana Judicial Center, the Court Alcohol and Drug Program Advisory Committee (CADPAC) shall conduct a hearing.

(1) The hearing shall be conducted by a hearing examiner who is selected as follows:

(A) The executive director of the Indiana Judicial Center shall create a list naming three (3) judges who are members of the CADPAC but who are not members of the Board of Directors of the Judicial Conference.

(B) In designating the three (3) judges the executive director shall consider availability, years of service on CADPAC and extent of participation.

(C) The supervising judge shall select one (1) name from the three (3) listed and advise the executive director of the name selected.

(2) The hearing examiner shall conduct an informal hearing and is not required to follow any formal rules of evidence or procedure.

(A) At least ten (10) days before the date of the hearing, the hearing examiner shall provide the supervising judge and the Indiana Judicial Center with written notice of the date, time and place of the hearing.

(B) The party requesting the hearing must show why:

(1) the application meets the certification requirements established by the Judicial Conference of Indiana; or

(2) revocation of the certificate is justified.

(C) Either party may submit supporting evidence, if any.

(D) The hearing examiner shall make an electronic recording of the hearing and may have a written transcript prepared of the electronic recording. The supervising judge may obtain a copy of the electronic recording or the written

transcript if a written transcript has been prepared from the Indiana Judicial Center upon payment of the cost of the copy.

(d) Within thirty (30) days after the hearing, the hearing examiner shall submit proposed written findings and recommendations to the supervising judge and the Indiana Judicial Center.

(1) Objections to the findings and recommendations must be:

(A) in writing; and

(B) filed with the Indiana Judicial Center no later than fifteen (15) days after the date the proposed findings and recommendations were issued.

(2) The findings and recommendations will be submitted to CADPAC unless the supervising judge gives written notice within the fifteen (15) day period that he or she has decided to withdraw the appeal.

(3) If no objections are filed and CADPAC adopts the findings and recommendations as submitted without a hearing, those findings and recommendations become final.

(4) If either the supervising judge or the executive director of the Indiana Judicial Center objects to the findings and recommendations, or if CADPAC proposes to modify or reject the findings and recommendations in the absence of any objections, CADPAC must conduct a hearing and provide the supervising judge and the executive director of the Indiana Judicial Center with an opportunity to be heard orally concerning the findings and recommendations. At least ten (10) days before the hearing, the Indiana Judicial Center must give written notice of the date, time and place of the hearing to the supervising judge.

(5) CADPAC's findings and recommendations must be adopted by a majority vote of the members present and voting.

(e) The supervising judge or the executive director of the Indiana Judicial Center may request the Board of Directors of the Judicial Conference to review CADPAC's decision.

(1) The request for review must be:

(A) in writing describing specific objections to the findings and recommendations adopted by CADPAC; and

(B) filed with the Indiana Judicial Center within fifteen (15) days after the date CADPAC renders its decision.

(2) At least ten (10) days before the Board meeting, the Indiana Judicial Center must give written notice of the date, time and place of the meeting to the supervising judge.

(3) The Board's findings and recommendations must be adopted by a majority vote of the members present and voting and are final.

(4) The Indiana Judicial Center shall notify the supervising judge of the Board's decision in writing within ten (10) days after the decision is made.

### **Section 13. Notice of Change**

(a) Any applicant or holder of a certificate of approval shall give written notice to the Indiana Judicial Center of any change of supervising judge, drug court judge, drug court coordinator, or location of drug court staff. Notice of the change shall be submitted to the Indiana Judicial Center not later than thirty (30) days after the change takes effect. The Indiana Judicial Center may require a new application and review as a result of the change.

(b) Failure of any applicant or holder of a certificate of approval to provide written notice

of any change described in subsection (a), to the Indiana Judicial Center may result in the certificate of approval becoming void.

(c) Any court that terminates its certified drug court must provide the Indiana Judicial Center a written Notice of Intent, at least thirty (30) days prior to termination of its certified drug court, outlining its intent and reasons for termination.

#### **Section 14. Funding Authorization**

A drug court that is not certified by the Indiana Judicial Center, and an applicant whose plan of operation does not comply with requirements for certification under these rules is not entitled to receive a favorable review or recommendation from the Indiana Judicial Center on any application for funding of services from state, federal, or private funding sources.

#### **Section 15. Drug Court Management**

(a) A certified drug court must have a drug court team consisting of the following members:

- (1) The drug court judge.
- (2) The local prosecuting attorney or a representative from the prosecuting attorney's office.
- (3) A local criminal defense attorney.
- (4) One (1) or more local treatment providers.
- (2) The drug court coordinator.
- (3) One (1) or more case managers.

(b) The drug court team must establish a policy and practice regarding regular meetings to discuss the compliance or non-compliance, progress, sanctions, or termination of participants prior to the participants' scheduled court appearances.

(c) The certified drug court shall maintain on file a description of the members of the drug court team and of the advisory body if one has been appointed.

(d) The drug court coordinator is responsible for the daily operation and administration of the certified drug court. Under IC 12-23-14.5-8, the supervising judge may appoint the clinical and administrative personnel necessary to support the certified drug court.

(e) The certified drug court must have a written statement of goals and objectives in its policy and procedure manual that clearly reflects the certified drug court's philosophy and guides the operation of the certified drug court and the delivery of services. The drug court coordinator must review the statement annually and revise it as necessary.

(f) A certified drug court must have a policy and procedure manual that contains written policies and procedures for conducting day-to-day certified drug court activities. A certified drug court must do each of the following:

- (1) Incorporate each of the ten (10) key components into its policies, procedures, and practices.
- (2) Update the manual as needed, but at least annually.

- (3) Make the manual available to the drug court team and staff.
- (4) Verify that all practices are in keeping with the policies and procedures contained in the manual.

(g) The written policies and procedures of a certified drug court must include each of the following:

- (1) Full documentation of the certified drug court's operational and administrative structure including one (1) or more organizational charts that:
  - (A) depict certified drug court lines of authority;
  - (B) identify all staff positions; and
  - (C) accurately reflect current certified drug court practice.
- (2) A description of staff functions.
- (3) A description of the procedures the certified drug court will use to implement the principles and guidelines.
- (4) A description of the criteria for the acceptance of substance use-involved offenders as participants who are eligible to receive one (1) or more services provided by the certified drug court.
- (5) A policy and practice of nondiscrimination in providing drug court services, which must address nondiscrimination on the basis of each of the following:
  - (A) Race.
  - (B) Gender.
  - (C) Age.
  - (D) Religion.
  - (E) Ethnicity
  - (F) Disabilities.

Notwithstanding the policy and practice of nondiscrimination on the basis of age, an adult drug court may exclude juveniles from participating, and a juvenile drug court may consider juveniles who are waived into adult court or excluded from juvenile court to be ineligible.

- (6) A policy and procedure for providing referral information to individuals denied admission to the certified drug court.

(h) Any time a certified drug court refers a participant to a provider for addiction treatment services not provided by the certified drug court, the certified drug court must do the following:

- (1) Determine annually that the addiction treatment services provider is certified by the division of mental health and addiction, or an equivalent certifying agency if the addiction treatment services provider is located out-of-state, and obtain a copy of:
  - (A) the provider's accreditation if the provider is an agency; and
  - (B) the credentials of all individual treatment providers.
- (2) Have a written referral agreement with the addiction treatment services provider that at a minimum includes procedures for the following:
  - (A) Initiation and acceptance of referrals.
  - (B) Exchange of participant-related information.
  - (C) Post-referral reporting by the addiction treatment services provider that enables the drug court to perform its participant-monitoring responsibilities.

- (i) A certified drug court may contract with a person, firm, corporation, association, or

governmental entity, to provide one (1) or more services for the drug court except legal eligibility determination and case termination. A contractor must possess and demonstrate the capability to provide contractual services for the drug court in the manner intended and meet all requirements contained in IC 12-23-14.5 and these rules that apply to the services the contractor will provide.

*Commentary on Section 15. The supervising judge of a certified drug court is encouraged to appoint a drug court advisory body. See key component 10.*

*Commentary on Section 15(a). Each member of the drug court team should obtain sufficient in service training each year to stay current in drug court related issues. See key component 9. Requiring each member of the drug court team to sign a memorandum of understanding regarding confidentiality and the commitment to participate in drug court meetings is a recommended practice.*

*Commentary on Section 15(b). The treatment provider should participate in case staffing sessions on a regular basis. The prosecuting attorney or representative of the prosecuting attorney and local defense attorney members of the drug court team should participate in case staffing sessions each time negative sanctions are to be considered against any participant. See key components 2 and 6.*

*Commentary on Section 15(h)(1). The purpose of this subdivision is to ensure that certified drug courts are confirming the credentials of the addiction treatment service providers prior to making referrals. In addition, the Indiana Judicial Center encourages drug courts to refer participants to providers who assign only individuals who have a competency based substance abuse credential (such as a certificate from ICAADA, ICRC, or NAADAC) to provide addiction treatment services to the drug court participants referred to them.*

## **Section 16. Drug Court Staff Requirements**

(a) A certified drug court must have a policy and procedure describing staff qualifications.

(b) A certified drug court must have written evidence that the coordinator and each clinical screening staff member has achieved professional status by complying with at least one (1) of the following:

- (1) a baccalaureate degree from an accredited university or college and thirty (30) hours of alcohol and drug specific training, thirty (30) hours of clinical screening and interviewing training in any combination, and three (3) hours training in the interpretation of chemical test results;
- (2) the equivalent of four (4) years of full-time paid experience in the human service area and thirty (30) hours of alcohol and drug specific training, thirty (30) hours of clinical screening and interviewing training in any combination and three (3) hours training in the interpretation of chemical test results;
- (3) a current certificate from the Indiana Counselors Association on Alcohol and Drug Abuse (ICAADA), International Counselors Reciprocity Commission (ICRC), or National Association of Alcohol and Drug Abuse Counselors (NAADAC) as a certified alcohol and drug abuse counselor and three (3) hours training in the interpretation of

chemical test results; or

(4) Employed as a drug court coordinator or clinical screening staff member before May 1, 2003.

(c) A certified drug court must have written evidence that each case manager has achieved professional status by complying with at least one (1) of the following:

(1) a baccalaureate degree from an accredited university or college and thirty (30) hours of alcohol and drug specific training, thirty (30) hours of clinical screening and interviewing training in any combination, and three (3) hours training in the interpretation of chemical test results;

(2) the equivalent of two (2) years of full-time paid experience in the human service area and thirty (30) hours of alcohol and drug specific training, thirty (30) hours of clinical screening and interviewing training in any combination and three (3) hours training in the interpretation of chemical test results;

(3) a current certificate from the Indiana Counselors Association on Alcohol and Drug Abuse (ICAADA), International Counselors Reciprocity Commission (ICRC), or National Association of Alcohol and Drug Abuse Counselors (NAADAC) as a certified alcohol and drug abuse counselor and three (3) hours training in the interpretation of chemical test results; or

(4) Employed by a certified drug court as a case manager before May 1, 2003.

(d) An individual will be allowed one (1) year cumulatively, from the date of first hire, as a drug court coordinator, assessor, or case manager to achieve professional status.

(e) Professional status, once achieved, is maintained by documenting:

(1) twenty (20) hours annually of continuing education or training related to substance abuse issues; and

(2) five (5) hours annually of continuing education or training related to issues specific to the criminal justice system;

approved by the drug court coordinator.

(f) Status of Specimen Collection Staff.

(1) A certified drug court must require all of its employees, contractors, or volunteers performing specimen collection to have training and experience in each of the following:

(A) The administration of chemical tests.

(B) Specimen collection.

(C) Chain-of-custody and documentation procedures.

(D) Confidentiality of specimen collection and chemical test results.

(E) The proper handling of specimens as biological waste.

(2) An individual will be allowed ninety (90) days cumulatively from the date of first hire to attain and document training as a member of the specimen collection staff.

*Commentary on Section 16. A certified drug court may consider relevant life skills and life experiences in determining a person's qualifications.*

## **Section 17. Reports and Evaluations**

(a) A certified drug court must collect statistical data and submit to evaluations as

required by the Indiana Judicial Center.

(b) A certified drug court must provide each participant with an opportunity to complete a participant survey intended to provide the certified drug court with the participant's written comments about the services provided. The survey must include an opportunity to comment on the following:

- (1) services provided directly by the certified drug court;
- (2) services provided by the certified drug court through a contractor; and
- (3) services or treatment provided by referral agency.

(c) The supervising judge shall do the following:

(1) Prepare a written annual report that includes:

- (A) a summary of the certified drug court's activities and accomplishments;
- (B) a summary of the certified drug court's income and expenditures;
- (C) documentation of any certification reviews or visits, if applicable; and
- (D) statistical data and results of evaluations;

for the preceding year.

(2) Submit a copy of the annual report to the Indiana Judicial Center no later than ninety (90) days after the close of the certified drug court's reporting period.

## **Section 18. Eligibility Screenings**

A member or members of the drug court team must be designated to conduct eligibility screenings. The designated member or members of the drug court team must do each of the following:

- (1) Determine the offender's legal eligibility for drug court under IC 12-23-14.5-14, and under IC 12-23-14.5-15 if appropriate.
- (2) Recommend the offender to the drug court team as a potential participant in the certified drug court if appropriate.

## **Section 19. Orientation**

(a) A certified drug court must have and observe a written policy and procedure for conducting an orientation for each participant, and when appropriate, the participant's family. At a minimum, the policy and procedure must meet the following criteria:

- (1) The procedure for orientation includes an explanation of each of the following:
  - (A) Specific eligibility requirements for drug court participation including the fact that a person does not have a right to participate in drug court.
  - (B) The services offered by the certified drug court either directly or through referral.
  - (C) The requirements for successful completion of certified drug court. This explanation should include a description of the scheduling and attendance requirements including court dates, chemical testing, day reporting, appointments with case managers or treatment providers, self help and other group meetings and other regularly scheduled requirements.
  - (D) Conduct and behavior that could result in sanctions or termination from drug court.
  - (E) Possible sanctions for non-compliance with drug court requirements.

- (F) Information about the treatment providers used by the drug court.
  - (G) Information about the cost to participants for the user fee, chemical testing, and treatment expenses and the procedure and schedule for paying those costs.
  - (H) Information about the drug court's policy and procedures for scheduling and conducting chemical tests.
- (2) Orientation may be conducted during an individual or a group appointment.

(b) A certified drug court must have a form used to advise each participant in writing of the information described in subsection (a). The form must contain a signature line or a signature page for the participant to indicate that the participant has been provided a copy of the form, understands the information provided, and agrees to comply with the chemical testing requirements. The certified drug court must place the form or the signature page with the participant's original signature in the participant's record.

## **Section 20. Privacy and Confidentiality of Records**

(a) A certified drug court must respect the privacy of each participant to the maximum extent feasible. The drug court must specify in policy and procedure how participant privacy is maintained.

(b) A certified drug court must have a written policy and procedure, conforming to applicable state and federal laws, that ensures the confidentiality and security of participant records. At a minimum, the policy and procedure must do the following:

- (1) Provide for compliance with all federal and state laws, including federal rules pertaining to the confidentiality of alcohol and drug abuse patient records (42 CFR 2), and address any conflicts between federal and state law.
- (2) Address disclosure of information with regard to minor participants and incompetent or deceased participants.
- (3) Address disclosure of information to the following:
  - (A) Drug court team members.
  - (B) Participant's family or other contact person designated by the participant.
  - (C) Third party payers.
  - (D) Employers
  - (E) Legal counsel.
  - (F) Probation Department
  - (G) Addiction treatment services provider
- (4) Address disclosure without participant consent including but not limited to the following:
  - (A) Medical emergencies.
  - (B) Research, audit, and evaluation.
  - (C) Legal orders and subpoenas.
  - (D) Investigation and prosecution of participants for alleged violations, including child abuse and neglect.
- (5) Address the use of a valid written consent for disclosure of participant information and forms used for making disclosure.
- (6) Address storage and disposal of case records.
- (7) Identify the person responsible for authorizing disclosure of confidential information.
- (8) Require documentation in the participant record to support all information disclosed.

(c) A certified drug court must have a release of information form used to inform each participant in writing of the certified drug court's policies and procedures described in subsection (a), and to obtain the participant's consent for the release of confidential information to specified individuals for certain purposes. The form must meet the following requirements:

- (1) contain a statement indicating that the participant understands that matters relating to the participant's case and compliance will be discussed in open court;
- (2) contain a signature line for the participant to indicate that the participant understands the rights described in the form;
- (3) contain a signature line for a witness; and
- (4) any blank lines remaining after the form has been completed must be crossed out or marked "NA" to ensure the forms cannot be altered after being signed by the participant.

The certified drug court must place the form with the participant's original signature in the participant's record.

## **Section 21. Clinical Rights**

(a) A certified drug court must have written policies and procedures that ensure that all participants are informed of their clinical rights at the time of the certified drug court orientation or the clinical screening and that include but are not limited to the following:

- (1) Duty to inform participants of rights:
  - (A) The court must ensure that all individuals participating in the certified drug court are given a written statement of basic participant rights pursuant to its policies and procedures, and an explanation of those rights if necessary.
  - (B) When it is not possible to immediately inform an individual of the participant rights due to the inability of the participant to understand, this fact shall be documented in the participant's record and the individual shall be informed of the participant rights as soon as possible.
- (2) Unconditional rights. Each participant has the following unconditional rights:
  - (A) Right to be informed of the various steps and activities involved in receiving services.
  - (B) Right to confidentiality under federal and state laws relating to the receipt of services.
  - (C) Right to make an informed decision whether to participate in drug court or to refuse treatment and resume the legal proceedings. The participant's informed consent must be in writing and included in the participant's record.
  - (D) Right to humane care and protection from harm, abuse and neglect.
  - (E) Right to practice the participant's religion.
  - (F) Right to contact and consult with counsel and private practitioners of the participant's choice at the participant's expense.
  - (G) Right to inspect and copy the participant's case record. By policy the certified drug court may permit the withholding from the participant all or part of the participant's record if:
    - (i) withholding is necessary to protect the confidentiality of other sources of information;
    - (ii) it is determined that the information requested may result in harm to the physical or mental health of the participant or another person;
    - (iii) the consent was not given freely, voluntarily, and without coercion; or

- (iv) granting the request will cause substantial harm to the relationship between the participant and the certified drug court or to the certified drug court's capacity to provide services in general.
- (3) A participant's review of the participant's case record shall be recorded in the case record. Any denial of the participant's right to review the participant's record shall be recorded in the participant's record, together with the reasons for denial of the review.
- (4) Waiver of rights. A participant may waive any of the rights enumerated in subdivision (2) if the waiver is given voluntarily and knowingly. The waiver must be in writing and documented in the participant's record. The waiver may be withdrawn at any time. Admission to a certified drug court may not be conditioned upon the giving of a waiver of the unconditional rights described in subdivision (2).
- (5) Investigation of violation of participant rights. A procedure for the review, determination, and amelioration of instances of alleged violations of a participant's rights shall be established by policy in accordance with the following:
  - (A) Cases of alleged violation of a participant's rights are investigated through the use of the established mechanism.
  - (B) The results of the investigation of cases of alleged violation of a participant's rights are entered in the participant's record and the personnel file of the staff members involved.

(b) A certified drug court must have a form used to inform each participant in writing of the participant's rights described in subsection (a). The form must contain a signature line or a signature page for the participant to indicate that the participant has been provided a copy of the form and understands the rights described in the form. The certified drug court must place the form or the signature page with the participant's original signature in the participant's record.

*Commentary on Section 21(a)(1)(B). A drug court should take reasonable precautions to ensure that a participant understands the rights described in this section. If a drug court is willing to admit an impaired person to drug court, and the individual's inability to understand participant rights is due to the impairment, the drug court should provide as much information to the participant as possible under the circumstances and obtain the participant's signature on the form described in section 21(b). The drug court should then repeat the information and obtain a new signature as soon as possible at a time when the individual is not impaired. If an individual is not able to understand participant rights for a reason other than impairment, such as disability, age or language barrier, the drug court should wait until it has an effective means of informing the participant, such as advising a guardian or use of a translator, before having the participant sign the form described in section 21(b).*

## **Section 22. Clinical Screening**

- (a) A certified drug court must have a written policy and procedure for scheduling and conducting participant clinical screenings prior to referring the participant to a treatment provider.
- (b) The clinical screening must include a social history of the participant that provides, at a minimum, information about the following:
  - (1) statement of the presenting problem;

- (2) social, peer group, and environmental setting from which the participant comes;
- (3) military service history;
- (4) financial status;
- (5) alcohol and drug use of family members and attitudes toward such use;
- (6) occupational and educational status;
- (7) legal history and current legal status;
- (8) history of medical problems;
- (9) history of mental health problems; and
- (10) current thoughts of suicide or homicide.

(c) The clinical screening must include an alcohol and drug use history of the participant, including information about prescription and over-the-counter drug use, that provides the following information:

- (1) substances used in the past;
- (2) substances used recently, especially those used within the last forty-eight (48) hours;
- (3) substances of preference;
- (4) frequency of use of each substance;
- (5) previous occurrences of overdose, withdrawal, or adverse drug reaction;
- (6) year of first use of each substance;
- (7) method of administration of each substance; and
- (8) history of previous substance abuse treatment received.

(d) Clinical screening staff must use a clinical screening form that contains the information described in subsections (b) and (c). All clinical screenings must meet the following criteria:

- (1) The clinical screening staff must conduct a personal interview in the presence of the participant.
- (2) The clinical screening staff must document the personal interview by producing a narrative summary of the staff member's clinical impressions and a recommendation concerning the participant's appropriateness for drug court.
- (3) The clinical screening staff must place the narrative summary, or a copy of the narrative summary, in the participant's record.

## **Section 23. Treatment Plan**

(a) The certified drug court must obtain a written copy of the treatment provider's initial or master treatment plan for each participant.

(b) The drug court must provide a copy of the initial or master treatment plan to the participant or verify that the initial or master treatment plan includes the participant's written acknowledgement that the participant received a copy of the initial or master treatment plan.

(c) The drug court must establish a mechanism for periodically updating the treatment plan by obtaining copies of subsequent treatment plans or documenting modifications by the treatment provider through written updates submitted by the treatment provider or through progress notes maintained by the certified drug court.

(d) The initial or master treatment plan and any periodic updates must be maintained in

the participant's record.

## **Section 24. Participation Agreement**

(a) A certified drug court must develop a participation agreement that must contain each of the following:

- (1) The county or jurisdiction of the certified drug court.
- (2) All parties to the participation agreement.
- (3) The terms under which the participant enters the program, whether as a result of a guilty plea, a condition of probation, or the result of a violation of probation.
- (4) The case number or cause number accepted into the certified drug court.
- (5) The length of the drug court program.
- (6) A list of rights the participant must waive in order to participate in drug court.
- (7) A list of drug court requirements and participant responsibilities.
- (8) The effect of successful completion of drug court on the participant's case.
- (9) The consequences to the participant of unsuccessful termination of participation in the drug court.
- (10) Information related to drug court fees and procedures for payment.
- (11) A statement indicating that participation is contingent upon the participant's consent to the discussion in open court of information that would otherwise be confidential, relating to the participant's case and compliance.

(b) A certified drug court must provide each participant the opportunity to review the participation agreement with the advice of counsel.

(c) The participation agreement must include the signature of all parties to the agreement. A copy of the signed participation agreement must be maintained in the participant's record.

## **Section 25. Case Management**

(a) A certified drug court must have a policy and procedure for recording participant progress in the record of the participant.

(b) The participant record kept by the case manager must include progress notes that:

- (1) are filed or maintained in chronological order, either integrated or by type of record;
- (2) contain the date and the signature, name, or initials of the staff member making the entry; and
- (3) document any of the following:
  - (A) Result of the clinical screening.
  - (B) All contact with the participant.
  - (C) Any contact with an individual or an agency directly regarding the participant.

(c) The certified drug court must monitor the progress of each participant in satisfactorily completing the participant's treatment plan and participation agreement and other requirements governing the participant's conduct or performance during participation in the certified drug court. The monitoring procedure must, at a minimum, be capable of determining participants who have:

- (1) failed, as scheduled or required, to comply with the treatment plan;

(2) failed to comply with the participation agreement or with the rules of conduct of a service provider to which the participant was referred; or  
(3) been successfully or unsuccessfully discharged or terminated by a service provider to which the participant was referred.

(d) The certified drug court shall establish a written policy and procedure for:  
(1) terminating a participant's court imposed obligation to participate in the certified drug court; and  
(2) providing written notice to the court after the participant has:  
(A) successfully complied with the treatment plan and the participation agreement; or  
(B) violated any requirement of the treatment plan or the participation agreement.

## **Section 26. Facilities**

(a) All facilities where certified drug court services are provided must be located, constructed, equipped, and operated in a manner that protects and preserves the privacy, confidentiality, health and safety of certified drug court participants and staff.

(b) The certified drug court's facilities and operations must conform to all applicable federal, state, or local health and safety codes, including fire protection.

(c) All facilities must maintain recent documentation of compliance with all applicable codes.

(d) In order to ensure participant confidentiality, the certified drug court's facilities, including waiting rooms, offices, chemical testing facilities, and group areas other than the court room must be arranged in a way that minimizes disclosure to the general public of the person's status as a participant in the certified drug court. The facilities must provide adequate space for storage of participant records and permit participant records to be properly secured at all times as required under federal regulations.

## **Section 27. Fiscal Management**

(a) The certified drug court must have developed and implemented an accounting system with the capability to ensure financial transactions are thoroughly documented and handled in a uniform and consistent manner.

(b) The certified drug court must have a current budget.

(c) The certified drug court must have a documented schedule of fees for each certified service and procedures to ensure payments for services.

(d) The cost of all certified services combined that are provided to an individual under any one (1) cause number may not exceed the amount permitted under IC 12-23-14.5-12.

(e) The certified drug court must have effective cash handling controls and procedures, which prevent theft of funds.

(f) Money a certified drug court receives from a city or town user fee fund must be used to fund drug court services in compliance with IC 33-19-8-3. Money a certified drug court receives from a county user fee fund must be used to fund drug court services in compliance with IC 33-19-8-5.

(g) The certified drug court must have a written policy and procedure that addresses this section.

*Commentary on Section 27(d). The reference to “one (1) cause number” in this section is for the purpose of determining when an individual may be charged the drug court user fee. It is not intended to have any effect on how cases are counted. A certified drug court is not required to charge a new user fee on the basis of a participant having an additional cause number, but the certified drug court may charge an administrative or case management fee for the new cause number in the event that additional services are required such as a new clinical screening or compliance reporting will need to go to an additional court.*

## **Section 28. Personnel Management**

(a) The certified drug court must adhere to a written personnel policy and procedure manual, which must contain at a minimum:

- (1) Employment procedures.
- (2) An annual staff development plan for each staff member.
- (3) Rules for professional conduct.
- (4) Wages and benefits.
- (5) Job descriptions for all personnel and volunteers, which accurately reflect their actual job situations. The job descriptions must include, at a minimum:
  - (A) Job title,
  - (B) Qualifications,
  - (C) Credentials, if applicable.
  - (D) Duties and responsibilities,
  - (E) Reporting and supervisory responsibilities.

(b) The certified drug court must keep records for all staff that contain the following information:

- (1) Application or resume.
- (2) Credentials.
- (3) Verification.
- (4) Licensure when applicable.
- (5) Performance evaluations.
- (6) Salary and position changes.
- (7) Documentation of staff development activities.

In addition a juvenile drug court must keep the criminal records check conducted for each staff member prior to the staff member's employment.

(c) The certified drug court must develop and adhere to a written staff development plan, which must include:

- (1) Orientation for entry level staff.

- (2) In-service and continuing education activities.
- (3) Training and development activities to assist individuals in achieving and maintaining professional status.

## **Section 29. Chemical Testing**

(a) A certified drug court must establish and follow a written policy and procedures for scheduling and conducting chemical tests.

- (b) At a minimum the policy on chemical tests must address the following:
  - (1) The specific method or methods of chemical testing used by the drug court.
  - (2) What samples the drug court collects and tests, such as urine, blood, breath, sweat, or saliva.
  - (3) Substances identified by the tests.
  - (4) The cutoff level for each substance.
  - (5) Circumstances requiring a confirmation test, if any.
    - (A) The drug court's procedures for confirmation including the type of confirmation test used.
    - (B) The party responsible for paying the cost of a confirmation test.
  - (6) Collection procedures including staff training and chain of custody.

**END**